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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

CRISTAL B.,

Petitioner,

v.

THE SUPERIOR COURT OF MERCED  
COUNTY,

Respondent,

MERCED COUNTY DEPARTMENT OF  
HUMAN SERVICES,

Real Party In Interest.

F046673

(Super. Ct. No. 26668)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Frank Dougherty, Judge.

Cristal B., in pro. per., for Petitioner.

No appearance for Respondent.

No appearance for Real Party In Interest.

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\*Before Vartabedian, Acting P.J., Cornell, J., and Dawson, J.

Petitioner, in pro. per., seeks an extraordinary writ (Cal. Rules of Court, rule 38) to vacate the orders of the juvenile court made on November 3, 2004, at a Welfare and Institutions Code section 366.26 hearing.<sup>1</sup> Because extraordinary writ review is proper only from the hearing setting the section 366.26 hearing rather than from the section 366.26 hearing itself and because petitioner failed to file an extraordinary writ from the setting hearing, we must dismiss the writ petition as untimely.

### **STATEMENT OF THE CASE AND FACTS**

A brief summary of the facts will suffice in light of our disposition. In March 2003, petitioner's children, then six-year-old M. and four-year-old O., were removed from her custody by the Merced County Department of Human Services after petitioner was arrested for manufacturing phencyclidine (PCP) in her home. The children's father was reportedly living in Mexico and had no contact with the family for several years.

The juvenile court detained the children and declared them dependents of the juvenile court. (§ 300, subds. (b) & (g).) The court also ordered a plan of reunification, which it continued in effect over the ensuing 12 months. Meanwhile, the children were placed with maternal relatives.

At the 12-month review hearing conducted on April 8, 2004, the court terminated petitioner's reunification services for noncompliance and set the section 366.26 hearing for August 5, 2004. On April 15, 2004, petitioner filed a notice of intent to file a writ petition. However, this court dismissed her case as abandoned on May 19, 2004, after she failed to file an extraordinary writ petition.

On August 5, 2004, the juvenile court convened the section 366.26 hearing and continued the hearing until November 3, 2004. On November 3, 2004, the court

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

reconvened the continued section 366.26 hearing and continued it again until March 1, 2005. This petition ensued.

### **DISCUSSION**

Petitioner seeks reunification, arguing it is in the best interest of her children. Unfortunately, the time for challenging the juvenile court's order terminating reunification services has come and gone. The juvenile court terminated reunification services and set the section 366.26 hearing at the 12-month review hearing on April 8, 2004. Petitioner filed a notice of intent to file a writ petition (Rule 38(e)(4) [formerly rule 39.1B(f)]) but abandoned her case by failing to file an extraordinary writ petition. Consequently, she waived her right to appellate review of the findings and orders made by the court in setting a hearing under section 366.26. (§ 366.26, subd. (l)(2).) Accordingly, we must dismiss the petition.

### **DISPOSITION**

The petition for extraordinary writ is dismissed. This court's opinion is final forthwith as to this court.